

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 899
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Economic Development
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Committee Report (Substituted)

DIGEST

Currently, Texas does not offer insurance companies a premium tax credit for investing in small business venture capital funds. C.S.S.B. 899 creates certified capital companies (CAPCOs), small business venture capital funds that would be licensed by the Texas Department of Insurance and invest in small, including early-stage, businesses. Under the bill, insurance companies would fund CAPCOs in exchange for receiving certain premium tax credits.

PURPOSE

As proposed, C.S.S.B. 899 creates premium tax credits for investments made in certified capital companies.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller of public accounts in SECTION 1 (Articles 4.52, 4.53(c), 4.64(a), and 4.72(b), Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 4, Insurance Code, by adding Subchapter B, as follows:

SUBCHAPTER B. PREMIUM TAX CREDIT FOR INVESTMENT IN CERTIFIED CAPITAL COMPANY

Art. 4.51. DEFINITIONS. Defines "affiliate," "certification date," "certified capital," "certified capital company," "certified investor," "early stage business," "person," "premium tax credit allocation claim," "qualified business," "qualified debt instrument," "qualified distribution," "qualified investment," and "state premium tax liability."

Art. 4.52. DUTIES OF COMPTROLLER; RULES. Requires the comptroller of public accounts to administer this subchapter and to adopt rules and forms as necessary to implement this subchapter.

Art. 4.53. CERTIFICATION. Requires the comptroller to establish the application procedures for certified capital companies. Requires a person who files an application to submit the application on the requisite form by April 17, 2000, that is accompanied with a nonrefundable fee of \$7,500. Requires the application to include certain audited balance sheets. Sets forth terms and conditions to qualify as a capital company. Requires the comptroller to review and to ensure the application, organizational documents, and business history of each applicant, to satisfy the requirements of this subchapter. Requires the comptroller to take certain actions on the application within a certain time period.

Art. 4.54. MANAGEMENT BY CERTAIN ENTITIES PROHIBITED. Prohibits certain insurance companies from certain involvements in a capital company. Provides that Subsection (a) applies without regard to whether the insurance company or a person is licensed by or transacts business in this state. Provides that this article does not preclude certain companies and parties from exercising their legal rights and remedies.

Art. 4.55. OFFERING MATERIAL USED BY CERTIFIED CAPITAL COMPANY. Sets forth required language for any offering material involving the sale of securities of a certified

capital company.

Art. 4.56. REQUIREMENTS FOR CONTINUANCE OF CERTIFICATION. Sets forth required schedules, qualified and certified capital investment guidelines, and classifications for a certified capital company to continue certification, and a requirement that at least 50 percent of the investment be placed in early stage businesses.

Art. 4.57. EVALUATION OF BUSINESS BY COMPTROLLER. Authorizes a certified capital company to request from the comptroller a written opinion as to whether a business is a qualified business or an early stage business. Sets forth terms and conditions for the comptroller to respond to the request, notify the company on the status of a business, and to determine if that business is considered to be a qualified business or an early stage business, if investment in that business will further state economic development.

Art. 4.58. REPORTS TO COMPTROLLER; AUDITED FINANCIAL STATEMENT. Requires each certified capital company to report to the comptroller certain investment information and financial statements about the company by a certain date, depending on the conditions of the reporting requirements. Sets forth information that the audit must address regarding the methods of operation and conduct of the business.

Art. 4.59. RENEWAL. Requires each certified company to pay a nonrefundable fee of \$5,000 to the comptroller by a certain date. Provides that a renewal fee is not required within six months of the initial certification date of a certified capital company.

Art. 4.60. DISTRIBUTIONS; REPAYMENT OF DEBT. Authorizes a certified capital company to make a qualified distribution at any time. Sets forth investment conditions for a certified capital company to make a distribution or payment to its equity holders, including payments of principal and interest.

Art. 4.61. ANNUAL REVIEW; DECERTIFICATION; ADMINISTRATIVE PENALTY. Requires the comptroller to conduct an annual review of each certified capital company to ensure compliance and to determine eligibility status. Requires the annual review to be paid by each certified capital company. Establishes procedures for decertification of a certified capital company including a list of violations, notice requirements, and required actions by the comptroller. Sets forth procedures for the possible decertification capital company, including notification of the proper state agency of the decertification.

Art. 4.62 ADMINISTRATIVE PENALTY. Authorizes the comptroller to impose an administrative penalty on a certified capital company that violates this subchapter. Sets forth the amounts of the penalty and the considerations for setting the amount. Authorizes the enforcement of the violation to be stayed in the event of judicial review and the violator pays the penalties or files a bond. Sets forth leniency procedure for a person who cannot pay the penalty or file a bond to stay enforcement. Authorizes the attorney general to sue to collect the penalty, which is a proceeding considered to be a contested case under Chapter 2001, Government Code.

Art. 4.63. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS: DECERTIFICATION OF COMPANY. Authorizes a decertification to cause the recapture of premium tax credits and the forfeiture of future premium tax credits. Sets forth procedures for the recapture. Requires the comptroller to send written notice of the recapture or forfeiture to the investor.

Art. 4.64. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS: QUALIFIED BUSINESS LEAVES STATE. Requires the comptroller to adopt rules under which premium tax credit claimed by a certified investor are subject to recapture or forfeiture of a qualified business that fails to maintain its principal business operations in this state. Requires the rules to specify the manner in which the recaptured and forfeited credits may be apportioned among certified investors in a certified capital company. Requires the comptroller to send written notice of the recapture or forfeiture to the investor.

Art. 4.65. INDEMNITY AGREEMENTS AND INSURANCE AUTHORIZES. Authorizes a certified company to agree to purchase insurance for protection against losses from a recapture

or forfeiture.

Art. 4.66. PREMIUM TAX CREDIT. Requires certain certified investors who makes an investment of certified capital to earn a vested credit against the premium tax liability equal to 100 percent of the investment of capital, in the year of earned investment, subject to the limits imposed by this subchapter. Authorizes the investor to take up to 10 percent of the tax credit in any taxable year of the certified investor. Prohibits the credit to be applied against certain state premium tax liabilities from exceeding the state premium tax liability of the certified investor. Authorizes any unused tax credit to be carried forward indefinitely. Provides that a certified investor claiming a credit against certain state premium tax liabilities is not required to pay additional retaliatory tax levied under Article 21.46 as a result of claiming that credit. Provides that an investment under this subchapter is a "Texas investment."

Art. 4.67. PREMIUM TAX CREDIT ALLOCATION CLAIM FORM. Requires a premium tax credit allocation claim to be prepared and executed by a certified investor on a form provided by the comptroller. Requires the capital company to file the claim with the comptroller by August 17, 2000. Requires the claim form to include an affidavit of the investor under which the investor becomes legally bound and irrevocably committed to make an investment of capital in the company in the amount allocated even if the amount is less than the amount of the claim, subject only to the recipient of an allocation under Article 4.69. Prohibits the investor from claiming a premium tax credit under Article 4.66 for an investment that has not been funded, even if the investor has committed to fund the investment.

Art. 4.68. TOTAL LIMIT ON CREDITS. Provides that the maximum premium tax credit for this subchapter is \$100 million. Prohibits the total tax credits for all the certified investors from exceeding the amount that would entitle all certified investors to take total credits of \$10 million in a year. Prohibits the certified company and its affiliates from filing premium credit claims in excess of the maximum amount of certified capital for which the premium tax credit may be allowed.

Art. 4.69. PRO RATA ALLOCATION OF CREDITS. Applies this article only if the total premium tax credits claims by all certified investors exceed the total limits on premium tax credits established by Article 6.68(a). Requires the comptroller to allocate the total amount of the credits to certified investors on a pro rata basis. Sets forth the required formula for the pro rata allocation for each certified investor. Sets forth action that the comptroller may take if the investors are not allocated at least \$7.5 million in credits as a result of the pro rata allocation. Requires the comptroller to notify each certified capital company of the amount of tax credit by a certain date. Sets forth action that the company may take and the comptroller must respond to if the company does not receive an investment of capital equaling the amount of premium tax credits allocated to a certified investor. Prohibits the maximum amount of certified capital for which a premium tax credit allocation be allowed on behalf of one investor from exceeding \$2 million a year.

Art. 4.70. TREATMENT OF CREDITS AND CAPITAL. Authorizes the certified capital to be treated as an admitted asset, in any case, under the Insurance Code, when the investor is examined.

Art. 4.71. IMPACT OF TAX CREDITS CLAIMED BY A CERTIFIED INVESTOR ON INSURANCE RATES. Provides that the investor is not required to reduce the amount of premium tax included by the investor in connection with ratemaking for any insurance contract because of a reduction in the investor's Texas premium tax derived from the credit granted under this subchapter.

Art. 4.72. TRANSFERABILITY OF CREDIT. Authorizes a certified investor to transfer or assign premium tax credits to certain entities. Requires the comptroller to adopt rules to facilitate the transfer or assignment of premium tax credits. Authorizes the investor to transfer or assign premium tax credits only in compliance with the rules. Provides that the transfer or assignment does not affect the schedule for taking the premium tax credit.

Art. 4.73. PROMOTION. Requires the Texas Department of Economic Development to promote the program established under this subchapter in the Business and Community Economic Development Clearinghouse.

Art. 4.74. REPORT TO LEGISLATURE. Requires the comptroller to prepare a biennial report with respect to results of the implementation of this subchapter. Sets forth information that the report must include and to whom the report must be submitted.

SECTION 2. Redesignates Articles 4.01-4.08, 4.10-4.11, 4.11A, 4.11B, 4.11C, 4.12, and 4.17-4.19, Insurance Code, as Chapter 4A, Insurance Code, and adds the following subchapter heading:

SUBCHAPTER A. IMPOSITION AND COLLECTION OF TAXES AND FEES

SECTION 3. Requires the comptroller to adopt the rules under Chapter 4B, Insurance Code, by a certain date. Requires the comptroller to begin to accept applications for certification on a certain date. Prohibits a certified investor from making an investment with a certified capital company under Chapter 4B, Insurance Code, before January 1, 2001.

SECTION 4. Emergency clause.
Effective date: upon passage.